

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

BILLY J. HAMILTON,

Plaintiff,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY,
d/b/a CN/IC, a corporation,

Defendant.

No.07-cv-00383-MJR-DGW

PLAINTIFF DEMANDS
TRIAL BY JURY

COMPLAINT

Count I

**(Federal Employers' Liability Act)
(Negligence - Repetitive Trauma)**

COMES NOW the Plaintiff, BILLY J. HAMILTON, by and through his attorneys, Kujawski & Nowak, P.C., and for his Complaint against the Defendant, ILLINOIS CENTRAL RAILROAD COMPANY, d/b/a CN/IC, a corporation, states as follows:

1. That the jurisdiction of this Court is based upon an Act of Congress of the United States, being the Federal Employers' Liability Act, 45 U.S.C.A, Sections 51-60, as hereinafter more fully shown.

2. That at all times mentioned herein, the Defendant, ILLINOIS CENTRAL RAILROAD COMPANY, was a corporation and was controlled, operated and maintained in interstate commerce, and in transporting interstate commerce between various states.

3. That beginning on or about January 12, 1973, and at all times mentioned herein, the plaintiff, BILLY J. HAMILTON, was an employee of defendant, ILLINOIS CENTRAL RAILROAD COMPANY, a corporation.

4. That at all times mentioned herein all or part of the duties of the plaintiff as such an employee furthered interstate commerce conducted by the Defendant railroad or in some way directly or substantially affected said commerce.

5. That during the time that Plaintiff was employed by this Defendant as an engineer and while in the performance of his duty as an engineer, was operating trains which were inspected, maintained and repaired at the defendant's facilities in Centralia and East St. Louis, Illinois.

6. That during Plaintiff's employment with the Defendant, plaintiff was routinely exposed to vibrating engine seats, vibrating engine locomotives, and slack action on a repetitive continuing basis and was required to continually and repetitively engage in manipulation of locomotive controls with his arms and hands all of which resulted in his exposure to continuing and cumulative trauma to various parts of his body including but not limited to his low back, neck and spine, and the joints of his upper extremities.

7. That at all times relevant herein, the Defendant, by and through its agents, servants and employees, committed one or more of the following negligent acts or omissions to wit:

- (a) Failed to provide Plaintiff with a reasonably safe place in which to work;
- (b) Failed to provide plaintiff with proper supervision and instruction;
- (c) Failed to warn Plaintiff of the dangers and hazards of being exposed to repetitive trauma while operating a locomotive engine;
- (d) Assigned Plaintiff to do physical tasks beyond his physical capability;
- (e) Assigned Plaintiff to work upon locomotive engine seats that vibrated and transmitted shocks and forces to his body, back, and spine;

- (f) Exposed Plaintiff to repeated slack action in the operation of locomotive engines;
- (g) Failed to upgrade and repair its locomotive seats;
- (h) Failed to inspect and maintain its locomotive seats to reduce the transmission of shock and trauma to Plaintiff's body;
- (i) Allowed the unsafe practice to become the common practice;
- (j) Failed to maintain and replace seats on its locomotives in its Centralia, Illinois and East St. Louis, Illinois repair shops.

8. That Plaintiff was not aware of his true medical condition until within three (3) years of the filing of this Complaint.

9. That as a direct and proximate result in whole or in part, of one or more of the above and foregoing negligent acts or omissions on the part of the defendant, the plaintiff was exposed to cumulative and repetitive trauma, causing him to sustain severe and permanent injuries to the muscles, tendons, ligaments, bones and nerves of his low back, neck, spine; and upper extremities; that he has sustained pain and suffering in the past and is reasonably certain to experience pain and suffering in the future as a result of said injuries; that he has incurred permanent disfigurement and disability resulting from said injuries; that he has lost and will continue to lose large sums of money from his usual gainful occupation; that he has sustained a permanent impairment of his earning capacity; that he has become obligated in the past for medical expenses resulting from his injuries and will be obligated in the future to expend large sums of money for necessary medical care, treatment, and services; that he has sustained a permanent impairment of his enjoyment of life, all to the plaintiff's damage.

WHEREFORE, the Plaintiff, BILLY J. HAMILTON, prays judgment against the Defendant, ILLINOIS CENTRAL RAILROAD COMPANY, in an amount in excess of

SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) adequate to fairly and reasonably compensate him for his damages sustained herein, plus costs of this suit, plus pre-judgment interest.

PLAINTIFF DEMANDS TRIAL BY JURY

**COUNT II
(Federal Employers' Liability Act)
(Locomotive Inspection Act)**

COMES NOW the Plaintiff, **BILLY J. HAMILTON**, by and through his attorneys, KUJAWSKI & NOWAK, P.C., and for his count against the Defendant, **ILLINOIS CENTRAL RAILROAD COMPANY**, states as follows:

1.-6. As and for paragraphs 1-6 of this Count, Plaintiff repeats and realleges paragraphs 1-6 of Count I.

7. That the jurisdiction of this Court is based upon an Act of Congress of the United States, being the Locomotive Inspection Act 49 U.S.C.A. Sections 20701 et. seq., as more fully shown.

8. That the Defendant, **ILLINOIS CENTRAL RAILROAD COMPANY**, by and through its agents, servants, and employees, violated the Locomotive Inspection Act, in that it failed to provide Plaintiff with a locomotive and its appurtenances which were in a proper and safe condition, and safe to work on or about, by committing one or more of the following acts or omissions:

- (a) Failed to provide Plaintiff with operational braking systems on its locomotive;
- (b) Failed to inspect and maintain the braking system of its locomotives;

- (c) Violated 49 C.F.R. Sections 229.55; 229.57; and 229.59, in providing Plaintiff with a locomotive with a braking system which was not in proper and safe condition;
- (d) Violated 49 C.F.R. Section 229.23 in failing to conduct periodic inspections of its locomotive and cab;
- (e) Violated 49 C.F.R. Section 229.45 in failing to provide a locomotive free of vibrations and jolts, as a result of the insecure attachment of components and equipment;
- (f) Violated 49 C.F.R. Section 229.63 in allowing excessive lateral motion to jolt the Plaintiff;
- (g) Violated 49 C.F.R. Section 229.119 in failing to securely mount and brace its cab seats;

9. That as a direct and proximate result, of the above-mentioned acts or omissions on the part of the Defendant, **ILLINOIS CENTRAL RAILROAD COMPANY**, by and through its agents, servants and employees, the Plaintiff was exposed to cumulative and repetitive trauma to his body, causing him to sustain severe and permanent injuries to wit: injuries to the muscles, tendons, ligaments, bones and nerves of his low back, neck, spine; and upper extremities; that he has sustained pain and suffering in the past and is reasonably certain to experience pain and suffering in the future as a result of said injuries; that he has incurred permanent disfigurement and disability resulting from said injuries; that he has lost and will continue to lose large sums of money from his usual gainful occupation; that he has sustained a permanent impairment of his earning capacity; that he has become obligated in the past for medical expenses resulting from his injuries and will be obligated in the future to expend large sums of money for necessary medical care, treatment, and services; that he has sustained a permanent impairment of his enjoyment of life, all to the plaintiff's damage.

WHEREFORE, the Plaintiff, BILLY J. HAMILTON, prays judgment against the Defendant, ILLINOIS CENTRAL RAILROAD COMPANY, in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) adequate to fairly and reasonably compensate him for his damages sustained herein, plus costs of this suit, plus pre-judgment interest.

PLAINTIFF DEMANDS TRIAL BY JURY

KUJAWSKI & NOWAK, P.C.

BY: s/John P. Kujawski

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